IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case
Date of decision: 7th February, 2006

Civil Revision No. 124 of 2005

Sri Abbas Ali
S/o Abrar Ahmed
Ashok Tourist Hotel building matar Gali
Haldwani, District- Nainital ….Revisionist

Versus

1. Shri Ashok Kandpal
S/o late Sri Ghananand Kandpal
& others ….Respondents

Shri Syed Nadim, learned counsel for the revisionist.
Shri Bindesh Kumar Gupta, learned counsel for the respondents No. 4,5 and 6.

A.F.R. (Approved for Reporting)
Not approved for Reporting

(Hon. Mr. Justice Prafulla C. Pant)

Date: 07.02.2006

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

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Sri Abbas Ali
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Ashok Tourist Hotel building matar Gali
Haldwani, District- Nainital ……..Revisionist

Versus

1. Shri Ashok Kandpal
   S/o Late Sri Ghananand Kandpal
2. Shri Subhash Kandpal
   S/o Late Sri Ghananand Kandpal
3. Sri Deepak Kandpal
   S/o Late Sri Ghananand Kandpal
   All residents of House No. 6- 762
   Badripura, Haldwani
   Distt. Nainital.
4. Smt. Lajwanti Bhatt
   D/o Late Sri Ghananand Kandpal
   W/o Dr. Suresh Chandra Bhatt
   At present R/o Khatik Farm
   Teenpani, Post: Arjunpur
   Nainital
5. Smt. Laxmi alias Smt. Leela
   D/o Late Sri Ghananand Kandpal
   W/o Sri Shekhar Chandra Pandey (Retd. Lt. Col.)
   C/o N.C.C. Group, Hqrs 20-S, Birdwood Lines
   74 reeilly Cannt. Barteilly.
6. Smt. Damyanti Dwivedi
   S/o Late Sri Ghananand Kandpal
   W/o Sri Deep Chandra Dwivedi-Bank Manager
   R/o Officers Enclave, Phase-I Near Peeli Kothi
   Bari Mukhani, Haldwani, Distt. Nainital.
7. Sri Subhash Kumar Kandpal
   S/o Late Sri Ghananand Kandpal
   R/o Badripur, Haldwani, Distt. Nainital.
8. Addl. District Judge/II Fast Track Court/
   Judge Small Causes, Nainital. …Respondents

Shri Syed Nadim, learned counsel for the revisionist.
Shri Bindesh Kumar Gupta, learned counsel for the respondents No. 4,5 and 6.

Hon'ble Prafulla C. Pant, J.

This revision, preferred under Section 25 of Provincial Small Cause Courts Act, 1887, is directed against orders dated 03.09.2005 and 30.09.2005 passed by Judge Small Cause Courts/A.D.J./II F.T.C. Nainial in S.C.C. suit No. 3 of 1995.

2. Brief facts of the case are that the plaintiff/respondent - Shri Ghananand Kandpal (Since deceased) instituted a suit for ejectment and recovery of arrears of rent and damages against the revisionist- Abbas Ali, alleging that the building in question being a new construction, is not covered under U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. It is further pleaded by the plaintiff that the defendant/revisionist was tenant of the building in question on rent at the rate of Rs. 325/- per month and tenancy was terminated by serving him notice under Section 106 of Transfer of Property Act, 1882. The service of notice was made on 03.01.1995 and thirty days thereafter the tenancy stood terminated. It appears that the original plaintiff- Ghananand Kandpal died during the pendency of suit and his heirs were substituted. However, one of his heirs who was plaintiff No. 1/3 namely Subhash Kandpal was directed to be transposed as defendant No. 2 on the ground that he was in collusion of the tenant and acting against the interest of the landlords.

3. The suit is being contested by the tenant/defendant before the trial court for last more than ten years as the suit was instituted in the year 1995. The impugned order dated 03.09.2005 shows that the defendant has still not filed written statement and he was directed to file the written statement by 06.09.2005. The impugned order dated 30.09.2005 shows that the defendant insisted by moving an application 106-C with his application as to protection under Section 20(4) of U.P. Act 13 of 1972 read with Section 39 of the Act, be disposed of. By the impugned order dated 30.09.2005, the trial court, as it did not find any force in application 106 C, rejected the same. Aggrieved by this order, the defendant has filed this revision.

4. I heard learned counsel for the parties.

5. Section 20(4) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 protects the tenant against whom suit is instituted on the ground in default of payment of rent, eviction provided he unconditionally deposits at first hearing of the suit, the entire amount of the rent and damages together with interest at the rate of 9% per annum and the landlord's cost of the suit. However, this provision would be applicable only when the aforesaid Act is applicable to the building.

6. In para-8 of the affidavit dated 04.12.2005, filed by the revisionist before this Court, the defendant has admitted that the suit was instituted prior to the aforesaid Act became applicable to the building in question. Para-8 of the affidavit, filed by the revisionist (defendant) before this Court reads as under:-

"That ultimately the defendant (now petitioner) filed an application No. 106/Ga seeking protection and benefit of the provisions of sub-section (4) of section 20 read with section 39 of U.P. Act No.-13 of 1972 on the ground that admittedly the premises in suit including the building in question has ipso-facto come within the purview, operation and enforcement of U.P. Act No. 13 of 1972, on account of completing 10 years on 31.03.1995, just after filing the suit in or about 15.02.1995, according to law. A copy of said application no.- 106/Ga is annexed herewith marked as ***Annexure No-2*** *to this revision petition."*

The aforementioned para clearly indicates that on the date of institution of suit in question, U.P. Act 13 of 1972 was not applicable to the premises in question. Section-39 of the aforesaid Act provides that provisions of the Act are

applicable only to the pending suits under the old Act. In ***Satya Narayan V. III Addl. District Judge 1982 Allahabad Rent Cases Pg. 392,*** it has been clarified that in order to attract Section 39 of the Act, the suit must be pending on the date of commencement of the Act, i.e. on 15.07.1972. Admittedly, the suit was instituted on 15.02.1995 and not prior to 15.07.1972. As such, in the opinion of this Court, learned trial court has rightly found that the defendant/revisionist is not entitled to the benefit of sub-section (4) of section 20 read with section 39 of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972

7. In view of above discussion, there appears no illegality in the impugned orders passed by the trial courts. This court has no hesitation in observing that only to delay the trial the defendant is resorting to one mean or the other. The revision is dismissed, and trial court is directed to decide the S.C.C. suit No. 3 of 1995 as expeditiously as possible.

(Prafulla C. Pant, J.)

Dt: 7th February, 2006
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